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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 DAVID MUNGAI NJENGA,

10 Plaintiff,

11 v.

12 WARDEN NWDC, et al.,

13 Defendants.

No. C08-5679 RJB/KLS

ORDER DENYING MOTION FOR THE  
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.  
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is  
16 Plaintiff's motion for appointment of counsel. Dkt. 29. Having carefully reviewed Plaintiff's  
17 motion and balance of the record, the Court finds, for the reasons stated below, that Plaintiff's  
18 motion should be denied.

19 *DISCUSSION*

20 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
21 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*  
22 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
23 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may  
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1 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
2 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied). To decide whether exceptional  
4 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]  
5 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal  
6 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting  
7 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he  
8 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to  
9 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d  
10 1101, 1103 (9<sup>th</sup> Cir. 2004).

12 That a *pro se* litigant may be better served with the assistance of counsel is not the test.  
13 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues  
14 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further  
15 facts during litigation. But, if all that was required to establish the complexity of the relevant  
16 issues was a demonstration of the need for development of further facts, then practically all cases  
17 would involve complex legal issues. *Id.*

19 Mr. Njenga requests counsel to “investigate and represent petitioner in this matter as  
20 serious civil rights violation has [sic] been committed and might be involving more than just a  
21 handful of detainees.” Dkt. 29, p. 7.

23 Plaintiff has demonstrated an adequate ability to articulate his claims *pro se*. Plaintiff has  
24 not demonstrated that the issues involved in this case are complex or that he has had any  
25 difficulties in expressing them. Plaintiff has also not shown a likelihood of success on the merits  
26 beyond his conclusory allegations that his case has merits.

1 Accordingly, Plaintiff's motion to appoint counsel (Dkt. 29) is **DENIED**. The Clerk is  
2 directed to send copies of this Order to Plaintiff.  
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4 DATED this 4th day of March, 2010.  
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8 Karen L. Strombom  
9 United States Magistrate Judge  
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